UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

KIRK RUSSEL MARSH, Plaintiff, v. THE STATE OF UTAH; JUDGE MICHAEL EDWARDS; DANA EMMONS, Defendants.	Case No. 1:24-CV-516 Judge Patricia Tolliver Giles Magistrate Judge Ivan D. Davis

REPLY SUPPORTING DEFENDANTS JUDGE EDWARDS AND THE STATE OF UTAH'S MOTION TO DISMISS

INTRODUCTION

Plaintiff Marsh has failed to meaningfully refute the arguments made in Defendants' Memorandum Supporting Defendants Judge Edwards and the State of Utah's Motion to Dismiss. Significantly, this Court lacks personal jurisdiction over Judge Edwards; the State of Utah is entitled to Eleventh Amendment immunity; and Judge Edwards is entitled to judicial immunity. While not previously addressed, Marsh attempts to bring a petition for habeas corpus, but he is not in custody, and although it was not clear from Marsh's Complaint, Marsh has asserted that the Utah state-court proceeding is ongoing and that he has a petition to modify the child support order pending with that court. Thus, abstention under the *Younger* doctrine is appropriate.

ARGUMENT

1. This Court lacks personal jurisdiction over Judge Edwards.

Marsh cites to the principle that "In cases that may be brought only in federal court, . . . federal courts may exercise personal jurisdiction over a defendant regardless of where the defendant is found."[1] Federal Rules of Civil Procedure Rule 4(k)(1)(C) provides that serving a summons establishes personal jurisdiction over a defendant when authorized by a federal statute. The Securities Act and the Exchange Act both contain language that process may be served "wherever the defendant may be found." 15 U.S.C. § 78aa; 15 U.S.C. § 77v. Accordingly, in an action brought pursuant to such an act, a court may exercise personal jurisdiction over a defendant if the defendant was served with process and has sufficient contacts with the United States. *Sec. & Exch. Comm'n v. Karroum*, No. 117CV0187AJTIDD, 2018 WL 11230398, at *1 (E.D. Va. Feb. 2, 2018) (unpublished).

[1] Pl.'s Opp'n 6, ¶ 18.

None of the statutes Marsh cites implicitly allow the Court to exercise personal jurisdiction in this manner.[2] That a federal court may have subject-matter jurisdiction over an action does not mean that the court has personal jurisdiction over the defendant. "The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause. . . It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty." *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Personal jurisdiction must therefore be established by determining whether Judge Edwards is "subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(K)(1)(A). Although Marsh states that this is not a suit regarding Virginia law,[3] he has made Virginia and its laws relevant by filing in this Court, which sits in Virginia. And as Defendants have previously established, Virginia's long-arm statute does not reach Judge Edwards and even if it did, exercising personal jurisdiction over Judge Edwards would offend the Due Process Clause as he lacks sufficient minimum contacts with Virginia. Because this Court lacks personal jurisdiction against Judge Edwards, all claims against him must be dismissed. Joining Marsh's parents as plaintiffs would be futile, as the Court would still lack personal jurisdiction.

2. The State of Utah is entitled to Eleventh Amendment Immunity on all claims.

Marsh claims that Utah's refusing to address his "concerns at state levels" and "forcing" Marsh to file in federal court constituted a removal to federal court.[4] While Marsh is correct that a state waives Eleventh Amendment immunity when it removes a case to federal court, he is confused about the procedural process of removal. Pursuant to 28 U.S.C. § 1446, a defendant may remove a civil action from the state court in which it was filed to federal court. Marsh initiated this

[2] *Id*. at 6–8, ¶ 21.
[3] *Id*. at 6, ¶ 19.
[4] *Id*. at 24, ¶ 50(a).

action in this Court; Defendants did not remove it here. Thus, the State of Utah has not waived its Eleventh Amendment immunity, and the Court should dismiss all claims against it. Joining Marsh's parents as plaintiffs would be futile, as doing so would not affect the State of Utah's immunity.

3. Judge Edwards is entitled to absolute judicial immunity.

Marsh argues that Judge Edwards is not entitled to absolute judicial immunity because the decisions Judge Edwards made in presiding over the divorce proceeding were taken in the clear absence of jurisdiction.[5] That a court makes an erroneous ruling within its jurisdiction does not waive immunity. *See King v. Myers*, 973 F.2d 354, 357 (4th Cir. 1992). When there is clearly no jurisdiction over the subject-matter, and that is known to the judge, judicial immunity does not apply. *Bradley v. Fisher*, 80 U.S. 335, 351-52 (1871). "But where jurisdiction over the subject-matter is invested by law in the judge . . . the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case . . ." *Id*. at 352. An example of an action taken in the clear absence of jurisdiction is "if a probate judge, with jurisdiction over only wills and estates, should try a criminal case." *Stump v. Sparkman*, 435 U.S. 349, 357 n.7 (1978). Such a judge would not be immune from liability. *Id*. However, "if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune." *Id*.

Here, Marsh alleges that Judge Edwards deviated from the child support guidelines in ordering Marsh to pay child support, which his parents then paid of their own accord; ordered Marsh to attend reunification therapy; did not remove Dana Emmons as the court-appointed therapist; and did not order a child abuse investigation. These actions are clearly within Judge Edwards's jurisdiction as the judge presiding over the divorce proceeding. Even if these decisions

[5] *Id*. at 31–41.

were erroneous, they would merely be taken in excess of jurisdiction. Judge Edwards retains absolute judicial immunity.

Marsh is correct in stating that absolute judicial immunity is not a bar to prospective injunctive relief. *Pulliam v. Allen*, 466 U.S. 522, 541 (1984). However, Marsh seeks monetary damages of $117,000,000.00 from Defendants.[6] Such a claim is barred by immunity.

Furthermore, § 1983 specifically prohibits federal courts from issuing injunctions against state court judges "unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Marsh cannot demonstrate either of those exceptions.

Overall, because Judge Edwards's actions were not taken in clear absence of jurisdiction, Judge Edwards is entitled to absolute judicial immunity against claims for monetary damages, and because Marsh has no basis to continue any other claim, all claims for relief should be dismissed against Judge Edwards. Adding Marsh's parents as plaintiffs would be futile, as Judge Edwards would still retain absolute judicial immunity.

4. Marsh cannot bring a petition for habeas corpus because he is not in custody.

Although his argument is unclear, it seems that Marsh attempts to bring a petition for habeas corpus because he may be arrested in the future if he continues to fail to pay child support.[7] "[H]abeas corpus is an attack by a person in custody upon the legality of that custody, and [ ] the traditional function of the writ is to secure release from illegal custody." *Toure v. Hott*, 458 F. Supp. 3d 387, 397 (E.D. Va. 2020) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). That the person be in custody when the petition is filed is a "requirement of the habeas corpus statute . . . designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual

[6] Pl.'s Compl. 50, ¶ 239.
[7] Pl.'s Opp'n 16, ¶ 41(f).

liberty." *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 351 (1973). This requirement is jurisdictional, and a federal court may not entertain the petition if the person is not in custody. *See Wilson v. Flaherty*, 689 F.3d 332, 336 (4th Cir. 2012). A criminal defendant is not in custody for habeas purposes "when the sentence imposed for the conviction has fully expired at the time his petition is filed." *Id*. at 337. Moreover, "mere 'speculative possibility' of confinement is insufficient custody for the invocation of habeas corpus relief." *Hilton v. Johnson*, 82 Fed. App'x 521, 522 (9th Cir. 2003); *see Hensley*, 411 U.S. at 351 (finding that habeas corpus is not an appropriate remedy "for cases in which the restraints on liberty are neither severe nor immediate.").

Marsh is not currently in custody. As of June 26, 2022, Marsh had fully served the duration of his sentence for his federal crimes.[8] It has not been alleged that there was a term or condition of that sentence that would impose another restraint on his liberty. And it seems that Marsh seeks habeas corpus relief not for this conviction but rather because he could be arrested for failing to pay child support. This is a mere speculative possibility of confinement and is insufficient to invoke habeas corpus relief. As Marsh is not in custody, this Court lacks the jurisdiction to consider a petition for habeas corpus from Marsh.

5. Abstention under *Younger* is appropriate in this matter.

Under the *Younger* abstention doctrine, a federal court must abstain from exercising jurisdiction over a case where there is an ongoing state action. *Younger v. Harris*, 401 U.S. 37, (1971). The policies underlying the *Younger* doctrine are "fully applicable to civil proceedings in which important state interests are involved." *Moore v. Sims*, 442 U.S. 415, 423 (1979). *Younger* abstention is required when (1) state proceedings, judicial in nature, are pending; (2) the state

[8] Pl.'s Compl. 6, ¶ 32

proceedings involve important state interests; and (3) the state proceedings afford adequate opportunity to raise the constitutional issue. *See Nat'l Home Ins. Co. v. State Corp. Comm'n of Com. of Va.*, 838 F. Supp. 1104, 1117–18. (E.D. Va. 1993); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

The *Younger* abstention factors are present here. Although it was not clear from Marsh's complaint, Marsh asserts that he has filed a petition to modify the child support order in Utah state court and that the Utah state court has yet to issue a ruling on this petition.[9] Thus, if Marsh's assertions newly made in his opposition are true, there must be an ongoing state judicial proceeding. This state proceeding affords adequate opportunity to raise the issues Marsh brings. Marsh is concerned about the amount of child support he has been ordered to pay—a petition to modify the child support order would address these concerns and is the appropriate avenue by which to remedy these concerns. *See* Utah Code Ann. § 78B-12-210(9)(a). The state proceeding would also provide vehicles for Marsh's constitutional claims to be heard. *See Hahn v. Hahn*, 2018 UT App 135, ¶ 22, 427 P.3d 1195 (considering on appeal of an order on a petition to modify a father's argument that child support statutes violated his federal due process protections). And the case involves important state interests. Family relations, as is at issue here, is a "'traditional area of state concern.'" *Harper v. Pub. Serv. Comm'n of W.Va.*, 396 F.3d 348, 352 (4th Cir. 2005) (quoting *Moore v. Sims,* 442 U.S. 415, 435 (1979)). Accordingly, the Court should abstain and dismiss the case.

[9] Pl.'s Opp. 1, ¶ 1.

CONCLUSION

For these reasons and those in the Memorandum Supporting Defendants Judge Edwards and the State of Utah's Motion to Dismiss, Defendants request that the Court grant their motion and dismiss Plaintiff's Complaint.

RESPECTFULLY SUBMITTED this 20th day of May 2024,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on May 20, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to the following:

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